Supreme Court, U.S.
FILED
DEC 27 2001
CLERK

(2)

No. 01-728

IN THE

Supreme Court of the United States

OCTOBER TERM, 2001

MOUNTAIN WEST HELICOPTERS, LLC,

Petitioner,

v.

TEXTRON INC. and
HONEYWELL INTERNATIONAL INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

V.L. Woolston*
Christian Moller
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8634

Attorneys for Respondents Textron Inc. and Honeywell International Inc.

*Counsel of Record

9pp

QUESTIONS PRESENTED

I

Should this Court review an issue of tort law that the parties have agreed is governed by the common law of the state of Idaho, when the decision of the circuit court below was unanimous and is uncontradicted by any decisions of Idaho's state courts?

PARTIES TO THE PROCEEDINGS BELOW

The following parties to the proceedings in the district court were dismissed before that court entered judgment against Petitioner:

1. McTurbine, Inc.
2. Pueblo Airmotive, Inc., and
3. Garlick Helicopters, Inc.

The following party settled with Petitioner while the case was on appeal to the Tenth Circuit:

1. Scott Paper Company (which had been merged into Kimberly-Clark Corporation).

CORPORATE DISCLOSURE STATEMENT

Textron Inc., the identified defendant/respondent sold its interest in the Lycoming Turbine Engine Division of Avco Corporation to AlliedSignal Inc. in 1994, and AlliedSignal assumed the liabilities associated with this case. In 1999, AlliedSignal Inc. became, by merger, Honeywell International Inc. Honeywell, as a respondent, is the real party in interest.

Textron Inc. has no parent corporation. More than ten percent of its stock is owned by Putnam Fiduciary Stock Company, a subsidiary of Marsh & McLennan Companies, Inc. More than ten percent is also owned by FMR Corp.

Honeywell International Inc. has no parent corporation. No shareholder owns more than ten percent of its stock.

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

PARTIES TO THE PROCEEDINGS BELOW..... ii

CORPORATE DISCLOSURE STATEMENT..... ii

TABLE OF CONTENTS iii

OPINIONS BELOW..... 1

JURISDICTION OF THIS COURT..... 1

STATEMENT OF THE CASE..... 1

REASONS FOR DENYING THE WRIT.....2

CONCLUSION 4

TABLE OF AUTHORITIES

Cases

Braxton v. United States, 500 U.S. 344 (1991) 3

East River S.S. Co. v. Transamerica Delaval Inc.,
476 U.S. 858 (1986) 3

Four Corners Helicopters, Inc. v. Turbomeca, S.A.,
979 F.2d 1434 (10th Cir. 1992) 3

G&M Farms v. Funk Irrigation Co.,
119 Idaho 514, 808 P.2d 851 (Idaho 1991) 3

Haring v. Prosise, 462 U.S. 306 (1983) 2

*J.M.F. Trucking, Inc. v. Carburetor &
Elec. of Lewiston, Inc.*,
113 Idaho 797, 748 P.2d 381 (Idaho 1988) 3

Miller Indus. v. Caterpillar Tractor Co.,
733 F.2d 813 (11th Cir. 1984) 3

Ohio v. Wyandotte, 401 U.S. 493 (1971) 2

Ruhlin v. New York Life Ins. Co.,
304 U.S. 202 (1938) 4

Saratoga Fishing Co. v. J.M. Martinac & Co.,
520 U.S. 875 (1997) 3

Sea-Land Serv., Inc. v. General Elec. Co.,
134 F.3d 149 (3d Cir. 1998) 3

Statutes

28 U.S.C. § 1254(1) 1

OPINIONS BELOW

The opinion of the district court and the court of appeals are reproduced in the appendices to the Petition.

JURISDICTION OF THIS COURT

This Court has jurisdiction of this case, provided that the Petition was filed on time. 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner bought a military surplus UH-1L helicopter—commonly known as a "Huey"—from Scott Paper Company, which had been using the aircraft for hauling logs from its timber harvest lands. The contract of sale specified that the helicopter was sold "as is" and without any warranties. Petitioner also used the helicopter to haul logs—a mission for which it was neither designed nor intended. While engaged in this activity in a forest in Idaho, far from any navigable waters, the helicopter suffered a loss of engine power and crashed. The pilot was seriously injured, and the helicopter was a total loss.

The Lycoming Turbine Engine Division of Avco Corporation had originally manufactured the engine and sold it to the military in 1969. Avco was later acquired by Textron Inc., which eventually sold the Turbine Engine Division to AlliedSignal Inc., which has since become, by merger, Honeywell International Inc. For ease of reference, these entities are referred to collectively in this brief as "Respondents."

Petitioner sued several defendants in Utah state court and sought the value of the helicopter, plus various consequential losses. Petitioner asserted claims for negligence, strict products

liability, and various breaches of warranty. The defendants removed the case to federal court. Respondents moved to dismiss the case on the grounds that (1) Utah's choice-of-law rules would select the law of Idaho as the rule of decision and (2) Idaho classified Petitioner's claims for damage to its helicopter, plus its consequential damages, as economic loss for which there is no recovery in tort. The district court granted Respondents' motion.

Petitioner appealed to the Tenth Circuit and stipulated during the appeal that the tort issues it raised were governed by Idaho law. Petition at 3, App. 4a. The Tenth Circuit affirmed and denied Petitioner's petition for rehearing en banc. A petition for certiorari to this Court followed.

REASONS FOR DENYING THE WRIT

Because the parties agreed that the case below was governed by Idaho law, the questions presented by petitioner were decided under the common law of torts of the state of Idaho. This Court typically does not decide issues of state law that have been determined by a federal appellate court. *See Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983) ("a challenge to state-law determinations by the court of appeals will rarely constitute an appropriate subject of this Court's review"); *Ohio v. Wyandotte*, 401 U.S. 493, 497-98 (1971) ("This Court's paramount responsibilities to the national system lie almost without exception in the domain of federal law. . . . We have no claim to special competence in dealing with the numerous conflicts between States and nonresident individuals that raise no serious issues of federal law").

Petitioner concedes that the Idaho decisions on economic loss involve lost "economic expectations," not physical damage to

the product at issue. Petition at 17. The district court's and the Tenth Circuit's determinations that Idaho law would deny recovery for such physical damage therefore do not conflict with the decisions of the courts of Idaho. Petitioner cites two additional Idaho cases as conflicting with the rulings against it by the lower courts. But those cases do not present any such conflict. In the first, *J.M.F. Trucking, Inc. v. Carburetor & Elec. of Lewiston, Inc.*, 113 Idaho 797, 748 P.2d 381 (Idaho 1988), the economic loss rule was neither raised by the parties nor discussed anywhere in the opinion. The second case, *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P.2d 851 (Idaho 1991), involved no physical property damage, but rather the failure of a sprinkler system to meet a buyer's expectations, and the claims being appealed involved misrepresentation, not product liability.

The conflict suggested by Petitioner of the decision below with other circuit court decisions is illusory. The cases identified by Petitioner as a source of conflict arose under the laws of jurisdictions other than Idaho. *See Saratoga Fishing Co. v. J.M. Martinac & Co.*, 520 U.S. 875 (1997) (general maritime law); *East River S.S. Co. v. Transamerica Delaval Inc.*, 476 U.S. 858 (1986) (general maritime law); *Sea-Land Serv., Inc. v. General Elec. Co.*, 134 F.3d 149 (3d Cir. 1998) (general maritime law); *Four Corners Helicopters, Inc. v. Turbomeca, S.A.*, 979 F.2d 1434 (10th Cir. 1992) (Colorado law); *Miller Indus. v. Caterpillar Tractor Co.*, 733 F.2d 813 (11th Cir. 1984) (general maritime law). Consequently, they represent, at most, the different policies applied to a common question of tort law by different states and, in maritime cases, by the federal government. It is the business of this Court to decide conflicts between the circuit courts over their interpretations of federal law. *See Braxton v. United States*, 500 U.S. 344, 347 (1991) ("A

principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law"). No provision of the Constitution, the U.S. Code or this Court's rules empowers the Court to referee simple differences in tort policy among the states. *See Ruhlin v. New York Life Ins. Co.*, 304 U.S. 202, 206 (1938) ("As to questions controlled by state law, however, conflict among circuits is not of itself a reason for granting a writ of certiorari. The conflict may be merely corollary to a permissible difference of opinion in the state courts").

CONCLUSION

The Petition presents no issue of federal law, no conflict with established Idaho law, no true split among the circuits, and no question that merits this Court's review. The Petition should be denied.

Respectfully submitted,

V.L. Woolston*
Christian Moller
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8634

Attorneys for Respondents Textron Inc. and Honeywell International Inc.

*Counsel of Record